

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIC KLOPMAN-BAERSELMAN, as
Personal Representative for the Estate of
RUDIE KLOPMAN-BAERSELMAN,
deceased,

Plaintiff,

v.

3M COMPANY, a Delaware corporation,
a/k/a MINNESOTA MINING &
MANUFACTURING COMPANY; et al.,

Defendants.

Civil Action No. 3:18-cv-5536-RJB

PLAINTIFF'S RESPONSE TO
DEFENDANT MAERSK LINE,
LIMITED'S RENEWED MOTION
FOR SUMMARY JUDGMENT

NOTED ON MOTION CALENDAR:
FRIDAY, OCTOBER 19, 2018

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Eric Klopman-Baerselman, as Personal Representative for the Estate of Rudie Klopman-Baerselman, deceased, by and through the undersigned counsel of record, hereby files this Response to Defendant Maersk Line, Limited's ("Maersk") Renewed Motion for Summary Judgment. Supplemental Response in Opposition to Defendant Maersk Line, Limited's Motion for Summary Judgment. Maersk's motion for summary judgment should be denied at this juncture because, as discussed in previous responses, the parties remain engaged in discovery as to the issues that Maersk raises in its motion.

II. STATEMENT OF FACTS

Plaintiff incorporates by reference the “Statement of Facts” presented in Dkt. No. 70 as if fully stated herein.

As discussed previously in Plaintiff’s Consolidated Response in Opposition to Defendant Maersk Line, Limited’s Motion for Summary Judgment and Motion to Strike Affidavit of Daniel Sikkens (Dkt. No. 70) and Plaintiff’s Supplemental Response in Opposition to Defendant Maersk Line, Limited’s Motion for Summary Judgment (Dkt. No. 91), in support of its motion for summary judgment, Maersk submitted a declaration signed by Daniel Sikkens in which he makes unsupported statements regarding a transfer of assets between the owner of the vessels that Rudie Klopman-Baerselman worked aboard, RRL, and other entities. (Dkt. No. 9, Ex. E to Oberg Decl.). Maersk would have this Court and Plaintiff to accept these statements as true without verification. Neither Plaintiff nor the Court is required to do so.

Plaintiff, as mentioned in his Supplemental Response (Dkt. No. 91), noticed the deposition of Daniel Sikkens, the purported individual with knowledge of the asset transfer between RRL and other entities, for September 5, 2018. See Declaration of Benjamin H. Adams (hereinafter “Adams Decl.”), **Ex. 1**, Plaintiffs’ Notice of Videotaped Deposition of Daniel Sikkens, 8/23/18. Mr. Sikkens’ deposition did not go forward as Plaintiff requested. Maersk informed Plaintiff that it was not in a position to produce Mr. Sikkens for deposition but offered its “assistance in arranging a deposition of Mr. Sikkens at a mutually convenient time and location[.]” Adams Decl., **Ex. 2**, Correspondence from LeGros Buchanan & Paul, dated 8/31/18. In response, Plaintiff accepted Maersk’s offer of assisting in arranging Daniel Sikkens’ deposition. Adams Decl., **Ex. 3**, Correspondence from Dean Omar Branham, 8/31/18. No communication or assistance has been

1 forthcoming from Maersk and Daniel Sikkens' deposition has not been scheduled. Instead of
 2 standing by its offer to assist Plaintiff in obtaining mutually agreeable dates for Daniel Sikkens'
 3 deposition, Maersk has, for the third time, requested dismissal from this case, alleging that it is an
 4 improper party.

5 Pursuant to a Minute Order entered by this Court on October 10, 2018, there are
 6 approximately 8 months left in the discovery phase of this matter; thus, Plaintiff has ample time to
 7 re-schedule Mr. Sikkens' deposition and address the issues raised by Maersk in its renewed
 8 motion. Adams Decl., **Ex. 4**, Minute Order, 10/10/18.

10 **III. STATEMENT OF ISSUES**

- 11 1. Whether this Court should deny Maersk's motion for summary judgment?

12 **IV. EVIDENCE RELIED UPON**

13 Plaintiff relies on the pleadings and other materials on file with the Court, the Declaration
 14 of Benjamin H. Adams in support of Plaintiff's Response in Opposition to Defendant Maersk Line,
 15 Limited's Renewed Motion for Summary Judgment, the exhibits attached thereto, and the law set
 16 forth below.

18 **V. AUTHORITY AND ARGUMENT**

19 **A. Summary Judgment Standard**

20 Summary judgment is only appropriate where the district court is satisfied "that there is no
 21 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
 22 of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); F.R.C.P. 56 (c). The burden of
 23 establishing the nonexistence of a "genuine issue" is on the party moving for summary judgment.
 24 A party seeking summary judgment bears the responsibility of informing the district court of the
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1 basis for its motion, and identifying the portions of “the pleadings, depositions, answers to
2 interrogatories, and admissions on file, together with the affidavits, if any” which it believes
3 demonstrates the absence of a genuine issue of material fact. Wright & Miller, Federal Practice
4 and Procedure § 2727 at 121 (3d ed. 2003).

5 The only issue for a district judge who must determine whether the mover has sound basis
6 for a motion for summary judgment is whether there is a genuine issue for trial. *Anderson v.*
7 *Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If there is sufficient relevant evidence which, under
8 the applicable substantive law, would enable a reasonable jury to return a verdict in favor of the
9 party opposing summary judgment, then a genuine issue of material fact exists. *Id.* The existence
10 of genuine issue of material fact precludes summary-judgment. F.R.C.P. 56 (c).

12 The movant has the burden to establish that its opponent has failed to raise a genuine issue
13 of material fact by submitting evidentiary documents that negate the existence of some material
14 element of the opponent’s claim or defense, or if the crucial issue is one on which the opponent
15 will bear the ultimate burden of proof at trial, by demonstrating that the evidence in the record
16 insufficiently supports an essential element of the opponent's claim or defense. *Anderson, supra.*
17 If the movant satisfies this burden, the burden shifts to the party opposing the motion to
18 demonstrate that summary judgment is inappropriate.
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20 **B. Maersk is not entitled to summary judgment on the issues raised in its motion because**
21 **discovery on those issues is ongoing.**

22 Contrary to Maersk’s arguments, genuine issues of material fact remain as to whether it is
23 the proper entity to be named in this matter. Genuine issues exist because the parties have not
24 completed discovery as to these issues. Both the courts and the Federal Rules of Civil Procedure
25 also make it clear that parties have a right to adequate time to conduct discovery to present their
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1 case. “[S]ummary judgment is premature unless all parties have ‘had a full opportunity to conduct
2 discovery.’” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

3 As Plaintiff has explained in previous responses to Maersk’s motion, the deposition of
4 Daniel Sikkens is vital to the resolution of Maersk’s motion for summary judgment. Plaintiff
5 cannot thoroughly and fully respond to Maersk’s motion for summary judgment without first
6 completing discovery on the very issue which Maersk has raised in its motion. Plaintiff must be
7 given an opportunity to conduct discovery on the issue raised in Maersk’s motion for summary
8 judgment before summary judgment can be granted. *See Metabolife Int’l, Inc. v. Wornick*, 264 F.3d
9 832, 846 (9th Cir. 2001) (reversing a denial of a 56(f)--now 56(d)--request and stating that “the
10 Supreme Court has restated the rule as requiring, rather than merely permitting, discovery ‘where
11 the nonmoving party has not had the opportunity to discover information that is essential to its
12 opposition.’”) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986)).

14 Plaintiff has been conducting discovery on this issue, in good faith, and has not yet been
15 given the opportunity to depose Daniel Sikkens, even though Maersk offered to assist Plaintiff in
16 arranging Mr. Sikkens’ deposition, an offer that seems less than genuine given that, instead of
17 assisting Plaintiff, Maersk has again requested that this Court dismiss it from this case. Again, it
18 relies on conclusory statements as to what facts will be revealed in discovery which the parties
19 have not conducted. Plaintiff remains entitled to conduct discovery on any nonprivileged matter
20 that is not only relevant to Plaintiff’s claims against Maersk, but discovery that is also relevant to
21 Maersk’s defenses to Plaintiff’s claim—including Maersk’s contention that it has been improperly
22 named in this matter and/or that it does not hold the liabilities for any other defendant named in
23 this matter. See F.R.C.P. 26 (b). Maersk is not entitled to summary judgment on the successorship
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1 issue that it has raised in its motion until Plaintiff has been given a reasonable opportunity to
 2 conduct discovery on that issue, which reasonably includes the deposition of the individual that
 3 Maersk has identified as the individual with relevant information.

4 VI. CONCLUSION

5 For the reasons expressed in Plaintiff's initial response to Maersk's motion for summary
 6 judgment (Dkt. No. 70), Plaintiff's supplemental response (Dkt. No. 91), and in this response,
 7 Plaintiff respectfully requests that this Court deny Maersk's motion for summary judgment and
 8 permit Plaintiff to conduct the remaining discovery on the issues that Maersk has raised in its
 9 motion. Because the parties have not yet had a reasonable opportunity to conduct discovery
 10 sufficient to thoroughly respond to these issues, justice requires that Plaintiff have additional time
 11 to conduct discovery relevant to the resolution of these issues.
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13 DATED at Los Angeles, California, this 15th day of October 2018.

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CERTIFICATE OF SERVICE

I hereby certified under the penalty of perjury under the laws of the State of Washington that on October 15, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Benjamin H. Adams
Benjamin H. Adams